

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

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for March 3, 2004 PLANNING COMMISSION MEETING

**P.A.S.:** Special Permit #04006

**PROPOSAL:** A special permit to allow the sale of alcoholic beverages for consumption off the premises.

**CONCLUSION:** This request is within 100' of both a residence and a residential district. Due to the intensity of the site development, access to a residential street, insufficiency of screening, the orientation of surrounding residences, and the fact that this request is located within an impacted neighborhood, it is not possible to mitigate the impacts of the sale of alcohol for consumption off the premises due to the reduction in separation of less than 100'.

<b><u>RECOMMENDATION:</u></b>	Denial
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### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** The east 80' of Lots 10, 11, and 12, Cooleys Addition, Lincoln, Lancaster County, Nebraska.

**LOCATION:** 1301 North 27<sup>th</sup> Street

**EXISTING ZONING:** B-3 Commercial

**EXISTING LAND USE:** Convenience Store

### **SURROUNDING LAND USE AND ZONING:**

North:	Residential	B-3
South:	Commercial	B-3
East:	Commercial	B-3
West:	Residential	R-4

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates commercial land uses in this area

**TOPOGRAPHY:** The topography is flat in this area and along this portion of the North 27<sup>th</sup> Street corridor. This site and all surrounding properties are developed.

**ASSOCIATED APPLICATIONS:** CZ#04003 - Proposes amending LMC Sections 27.63.680 and 27.63.685 by: deleting the provision that allows City Council to waive any of the specifically listed conditions; deleting the provision that allows the applicant to mitigate the adverse effects when the premises is less than 100' from specific uses and residential zoning districts; deleting residential uses from the uses that must be at least 100' away from alcohol sales; deleting the provision that the City Council determines the proper vehicular access to the property; adding parks, churches, and state mental health institutions to the list of uses that must be 100' away from alcohol sales; gives the Planning Commission authority to approve the special permit; and, deleting the planning director's authority to approve mitigation plans. The Planning Commission considered the application on **February 18, 2004**, and after a public hearing voted 6-2 to deny the request.

### **ANALYSIS:**

**OVERVIEW:** This request is to allow the sale of alcohol for consumption off the premises, a change in use that requires a special permit to be allowed. The site is developed with a T's Stop & Shop convenience store and car wash facility, located in separate buildings. The applicant is proposing to sell alcohol for consumption off the premises from the convenience store.

CZ#04003 proposes changes to the requirements for special permits for the sale of alcohol which would affect this application if they were in effect. However, this request is subject to the requirements of the Zoning Ordinance at the time it was submitted, and has been reviewed using the existing requirements.

### **1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)**

**27.63.685:** Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

#### **(a) Parking shall be in accordance with LMC Section 27.67.020.**

The B-3 district requires one parking space per 600 square feet of floor area. The site plan shows a 1,910 square foot building with a paved parking lot and five off-street parking spaces - one more than LMC requires. New convenience stores typically provide two to three times more parking spaces. The site is intensely developed, and the sale of alcohol will only serve to create additional parking demand and traffic conflicts on a site where only a minimum number of spaces and circulation area is provided.

**(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under LMC Section 27.63.680 of this code.**

The sale of alcohol for consumption on the premises has not been proposed, and a special permit to allow it has not been requested.

**(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.**

The premises is located closer than 100' to both a residence to the north, and a residential district to the west. The premises is approximately 46' from the R-4 district to the west, and approximately 30' from a residence to the north. To offset the reduced separation, the applicant states that mitigation is provided by the following measures:

1. A 6' wooden privacy fence has been erected along the west and north property lines.
2. A row of proposed trees along the west property line. However, the type, size, and spread are not indicated.
3. The licensed premises is orientated south, and does not face either a residence or a residential district.
4. The car wash facility serves to help screen the convenience store from properties to the west.
5. There is not a drive-thru associated with the convenience store, nor are there exterior bells, buzzers, or loud speakers.
6. Outdoor lighting meets applicable requirements and regulations.

It should be noted that the fence described in #1 above is existing along the north property line, and is not a measure being proposed specifically to address the sale of alcohol. Additionally, it is not possible to evaluate the screening potential of the proposed trees along the west property line as the type, size, height and spread have not been provided. These trees should be deciduous and coniferous trees planted in an alternating pattern, and of a size that is adequate to provide immediate screening. Due to the actual configuration of the car wash drive-thru and the way it intersects the adjacent alley, it is not possible to provide screening along the full extent of the west property line. Also, the viability of the proposed landscaping in the rear portion of this line is questionable due to the limited width for planting along a building wall.

The licensed premises is approximately 30' away from the residence to the north, and abuts the side yard of the house. Due to the building configuration, the drive-thru stacking lane for the car wash wraps around the north side of the convenience store and is very close to the property line. Due to this proximity, planting any screening as mitigation in this area is unlikely.

This request is distinguished from other cases due to the orientation of nearby residences. Typically, the rear of the residential lots are presented to the commercial lot, with the residences all facing different streets. In this case, the residential building immediately to the west has at least two entrance doors facing Dudley Street, and is much closer to the vehicular and pedestrian traffic that is generated by the convenience store.

It should also be noted this store is located in a neighborhood that suffers from a higher crime rate compared to other neighborhoods in Lincoln. The availability of alcohol at this location is likely to increase that rate, as the crime rate associated with convenience stores that sell alcohol are generally higher than those that do not. If this request is approved, additional employees should also be required - two at the store at all times - to help provide increased security.

In several cases where proximity to residences was a concern, mitigation plans limited the hours during which alcohol could be sold. This application does not propose any such limit, but restricting the sale of alcohol to between the hours of 7 a.m. and 10 p.m. is a reasonable condition.

**(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.**

The mitigation plan indicates that exterior lighting complies with all applicable regulations and requirements. However, canopy lights are not subject to parking lot lighting design standards - but for this site they should be. The mitigation plan must be revised to state that the canopy lights will comply with the parking lot design standards for lighting to ensure that light is contained on site to the extent required by the Design Standards.

**(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.**

There is a drive-thru aisle on the site for the car wash, but a drive-through window is not being proposed in conjunction with the convenience store or with the sale of alcohol. However, the site plan does not show the actual alignment of the drive-thru where it

exits the car wash. The site plan must be revised to show 'as-built' conditions for the entire site and all facilities.

**(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.**

No such devices are proposed with this special permit.

**(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.**

The entrance door to the convenience store faces south and does not face a residential district.

**(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.**

Access to this site is from North 27<sup>th</sup> Street (arterial) and from Dudley Street (residential). In contrast to other requests where vehicular access was limited to arterial streets, traffic to and from this store would continue to use Dudley Street for access. The proposed alcohol sales will result in increased traffic on Dudley, a residential street.

**(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.**

**(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:**

**(1) Revocation or cancellation of the liquor license for the specially permitted premises; or**

**(2) Repeated violations related to the operation of the permittee's business.**

**Planning Commission review and City Council approval is required for this use.**

**1. POLICE RESPONSE:** The Police Department notes that the premises is less than 100' to a residence and a residential district and recommends denial. The review goes on to note that the Department understands that a mitigation plan can be approved at the Planning Director's discretion.

**2. PUBLIC WORKS RESPONSE:** Public Works and Utilities had no objections to this special permit request.

The staff recommendation is for denial. However, should the City Council vote to approve the request, approval should be subject to the following conditions.

**CONDITIONS:**

**Site Specific:**

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:

1.1 Revise the site plan to show:

1.1.1 The height and material of the fence.

1.1.2 A planting schedule that includes the type, height, and design spread of the trees. The planting schedule must show one-half the number of trees as upright junipers or other conifers that exceed 6' in height, planted in an alternating pattern with deciduous trees with the minimum size of the trees planted being 2 1/2" caliper.

1.1.3 'As-built' site conditions.

1.2 A revised mitigation plan stating that:

1.2.1 All exterior lights, including canopy lights, must comply with the Design Standards for parking lot lighting.

1.2.2 The sale of alcohol limited to between the hours of 7:00 a.m. and 10:00 p.m.

1.2.3 Two employees on site at all times.

2. This approval permits the sale of alcohol for consumption off the premises as shown on the site plan.

General:

3. Before receiving building permits:
  - 3.1 The permittee shall have submitted a revised final plan with 5 copies.
  - 3.2 Lighting on the property shall be designed and erected in accordance with parking lot lighting design standards.
  - 3.3 The construction plans shall comply with the approved plans.

Standard Conditions:

4. The following conditions are applicable to all requests:
  - 4.1 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 4.2 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 4.3 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

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Brian Will, 441-6362, [bwill@ci.lincoln.ne.us](mailto:bwill@ci.lincoln.ne.us)  
Planner

February 19, 2004

**APPLICANT:** Overstreet, Inc.  
3141 North Hill Road, #104  
Lincoln, NE 68508  
(402) 474-2104

**CONTACT:** Patrick O'Brien  
811 South 13<sup>th</sup> Street  
Lincoln, NE 68508  
(402) 475-0811

**OWNER:** Terrance Rupert  
1401 West Saltillo Road  
Roca, NE 68430  
(402) 474-2717





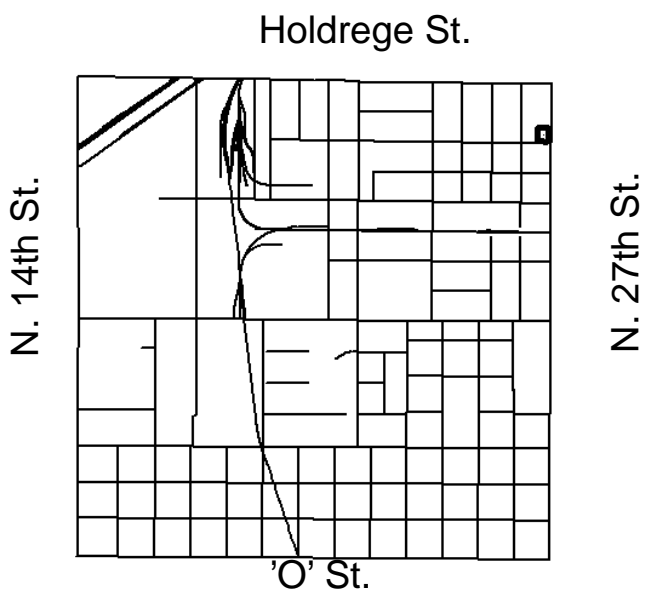
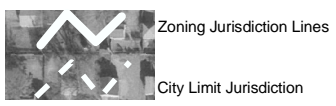
2002 aerial

# **Special Permit #04006** **N. 27th & Dudley St.**

## **Zoning:**

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile  
 Sec. 24 T10N R6E





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BUTLER, GALTER,  
O'BRIEN & BOEHM  
LAW FIRM

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Paul E. Galter  
Patrick T. O'Brien  
John M. Boehm

811 South 13th Street  
Lincoln, Nebraska 68508  
(402) 475-0811  
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Hal W. Bauer (1927-1993)  
Richard J. Butler (1951-2000)

February 2, 2004

Marvin Krout  
Director of Planning  
City of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Application for Special Permit, Overstreet, Inc.  
1301 North 27<sup>th</sup> Street, Lincoln, Nebraska

Dear

This letter is submitted pursuant to a special permit application procedures pursuant to City Ordinances for a Class B beer off-sale license. T's Stop & Shop has operated as a convenience store and gas station at 1301 North 27<sup>th</sup> Street for the last several years in Lincoln, Nebraska. It has won awards for improving the area from the City.

Lakisha Overstreet, president of Overstreet, Inc., has entered into a contingent lease with TTR, Inc., corporate owner of T's Stop & Shop and Terrance Rupert, owner of the real estate upon which the corporation is situated. That lease provides Lakisha Overstreet will act as manager under a liquor license to be sought through the City of Lincoln and the State of Nebraska for off-sale beer only, a Class B liquor license. This property has been improved by removing an unsightly old gas station facility. It was replaced with a modern, updated convenience store. It also operates a drive through car wash on the corner property at the intersection of 27<sup>th</sup> and Dudley Street.

27<sup>th</sup> Street, in this locality, is a zoned B-3. All lots on 27<sup>th</sup> Street bear that zoning. Immediately north of the subject property is single family residential rental real estate use. The residential use immediately north of the property is within 100 feet. However, it is screened by a solid wood fence six feet tall extending from the alley on the west to the eastern most limit along the north line of Lots 11 and 12. That fence also extends along the west line of the alley up to the corner of the car wash building along the west side of Lots 11 and 12. A block building housing the carwash extends in a southerly direction along Lots 11 and 12 and screens the operation of T's Stop & Shop from all residential uses in the residential zone to the west of the business premises.

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All screening accomplished by both the above described fence and building serve to separate entirely the operation of the convenience store/gas station from all abutting residential uses and separates the operation from both the residence to the north and the residential zone to the west. There is no foot traffic from the property to either the residential use, or to the residential zone, except along sidewalk paths adjacent to Dudley and 27<sup>th</sup> Street.

The locations of the building both for the car wash facility and for T's Stop & Shop also serve to screen adjacent properties from all lighting and other commercial operations. There are no exterior bells, buzzers or loud speakers. All conditions set forth under the City L.M.C. Chapter 27.63.685, with the exception that it is located within 100 feet of a residential use or district. The screening described above mitigates any adverse effect. The lighting on the property meets all lighting regulations and requirements. There is no drive-thru window as part of the business operation or any exterior source of sound or noise. No access doors face any residential district. Access to the building is off an arterial street, 27<sup>th</sup> and Dudley Street.

The applicant believes that the proper mitigation of any possible harm to any residential district has been met. We would point out the entire area of North 27<sup>th</sup> Street is primarily commercial on both sides. Intermittent residential uses occur along 27<sup>th</sup> in the area zoned for business. Both on the east and west side of 27<sup>th</sup> Street, residential zones abut the alleys separating the B-3 zone and residential zones. More or less the primary character of North 27<sup>th</sup> Street is commercial.

Sincerely,



Patrick T. O'Brien

PTO/nw

FEB - 2 2004

# M e m o r a n d u m

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**To:** Brian Will, Planning Department

**From:** Charles W. Baker, Public Works and Utilities *CB*

**Subject:** Alcohol Sales Special Permit #04006, Overstreet Inc.

**Date:** February 9, 2004

**cc:** Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan for Alcohol Sales Special Permit #04006 located at the 'T's Stop and Shop, 27th and Dudley. Public Works has the following has no objections.



**MICHAEL WOOLMAN**  
<lpd737@CJIS.CI.LINC  
OLN.NE.US>

To: Brian Will <BWill@ci.lincoln.ne.us>  
cc:  
Subject: Overstreet Inc.

02/11/2004 10:24 AM

Mr. Will,

The Lincoln Police Department has reviewed the Alcohol Sales Special Permit #04006. The plan shows the licensed portion of the building to be within 100 feet of a residential district/residential use. The Lincoln Police Department recommends denial based on the distance from a residential district/use. We also understand that the mitigation plan can be approved at the discretion of the Planning Director.

Sergeant Michael Woolman  
Lincoln Police Department